

ORDINANCE 2017-04

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO PARKING IN THE P-PUBLIC/QUASI PUBLIC ZONING DISTRICT AND PARKING AS A SPECIAL EXCEPTION USE; AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*; AMENDING APPENDIX “G”, AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS,” BY AMENDING SECTION 14-26 ENTITLED “P-PUBLIC/QUASI PUBLIC” TO PROVIDE FOR PROHIBITIONS AND SPECIAL DEVELOPMENT CONDITIONS; AND AMENDING SECTION 14-58 ENTITLED “SPECIAL EXCEPTIONS AND CONDITIONAL USES” TO AMEND SPECIAL EXCEPTION PARKING REGULATIONS AND LOCATIONS PERMITTED IN THE CITY”; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its Comprehensive Plan and protecting the public health, safety, and general welfare; and

WHEREAS, the City of Daytona Beach Shores is a small landlocked beachside community with less than one square mile in area; and

WHEREAS, off-street parking and off-beach parking as a principal use on the east side of South Atlantic Avenue will deteriorate the City’s limited tax base and ability to grow; and

WHEREAS, off-street parking and off-beach parking as a principal use on the east side of South Atlantic Avenue is inconsistent with the *Daytona Beach Shores Comprehensive Plan*; and

WHEREAS, Section 163.3194(1)(a), *Florida Statutes*, relates to the legal status of comprehensive plans and provides that:

“After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.”

; and

WHEREAS, Section 163.3194(3)(a), *Florida Statutes*, defines the term “consistent” as follows:

“A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.”

; and

WHEREAS, the expectation of consistency with the comprehensive plans of Florida’s local governments is very high. When courts examine the issue, they do not defer to the local government in the government’s decision of what is or isn’t consistent, as is done in some other reviews of local government determinations, *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla. 4th DCA 2001); the standard of court review is “strict scrutiny.” *Machado v. Musgrove*, 519 So. 2d 629, 633 (Fla. 3d DCA 1987). The court in *Machado*, defined strict scrutiny based on the meaning of the two words, saying “[s]trict implies rigid exactness or precision. A thing scrutinized has been subjected to minute investigation. Strict scrutiny is thus the process whereby a court makes a detailed examination of a statute, rule or order of a tribunal for exact compliance with, or adherence to, a standard or norm. It is the antithesis of a deferential review.” *Machado*, 519 So. 2d at 632. Thus, every decision on a development order and every change to a land development regulation must exactly comply with the applicable provisions of the local government’s comprehensive plan.

; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds it is in the best interests and welfare of the citizens and businesses of the City to enact this ordinance redirecting and regulating off-beach parking; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, the City Council of the City of Daytona Beach Shores adopts the staff analysis and materials that have been made part of the record of the proceedings in

which this Ordinance was enacted and, without limiting the generality of the foregoing, specially adopts the analysis that a only a denial development order could be issued under the authority of Section 166.033, *Florida Statutes*, as to any application or proposal to seek approval of beachside parking lot construction under the authority of controlling law; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores* and protects the City against assertions and applications that would violate the City's land use constitution; and

WHEREAS, the recitals to this Ordinance (whereas clauses) are adopted as the legislative findings and intent of the City Council of the City of Daytona Beach Shores; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~striketrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: Section 14-26, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “P Public/Quasi Public,” is amended to read as follows:

Sec. 14-26. - P Public/Quasi Public.

14-26.1. Purpose and Intent.

The purpose and intent of the Public/Quasi Public District is to best satisfy the internal, recreational and governmental service needs of the City of ~~entire~~ Daytona Beach Shores community. This district has been developed for implementing the City's comprehensive land use plan within, but not necessarily limited to, those areas shown for Public/Quasi Public.

14-26.1. [14-26.2.]

14-26.2. Permitted Accessory Uses and Structures.

Parks, churches and government offices, telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq., etc.

14-26.3. Prohibitions

- A. Off-beach parking facilities and parks are prohibited on properties located east of South Atlantic Avenue (State Road A1A and County Road 4075). Off-beach parking and parks located on properties located east of South Atlantic Avenue prior to the effective date of this Ordinance are grandfathered from this subsection regardless as to whether the establishment of the use was improvident.

- B. Storage facilities are not permitted on properties located east of South Atlantic Avenue (State Road A1A and County Road 4075).

14-26.4. Exemptions and Special Development Requirement

Notwithstanding subsection 14-26.3 (A) of this Code, the City Council may permit off-beach parking facilities and parks west of South Atlantic Avenue (State Road A1A and County Road 4075) by means of the issuance of a special exception (conditional use) upon making findings of each of the following and any other requirement set forth in this Code relating to special exceptions and conditional uses:

- a. The total parking, driving and vehicular use areas do not exceed sixty (60) percent of the overall area of the property.
- b. There is a clear demonstration of need for the parking facility or park based upon sound and generally accepted scientific and land use planning practices and principles. The burden of proof shall be on the property owner to meet this requirement.
- c. Off-beach parking facilities shall be located within five hundred (500) feet of a public pedestrian beach access or vehicular ramp

SECTION TWO: Section 14-58, *Land Development Code*, Chapter 14, Appendix “G”, *Code of Ordinances of the City of Daytona Beach Shores*, entitled “Special exceptions and Conditional Uses,” is amended to read as follows:

Sec. 14-58. - Special exceptions and conditional uses.

14-58.1. Special Exceptions

14-58.1.1.

A. *In General.* A special exception is a use that would not generally be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. Such use may be permitted in a zoning district as a special exception only if identified as such in this Code.

B. *Application Procedure.* Written application shall be made to the City for a special exception in accordance with this Code with the burden of proof and persuasion being upon the applicant at all times. In addition, the applicant shall provide, at a minimum, the following information:

1. A conceptual site plan showing buildings, parking and access locations, utility service points, proposed screening or buffering, supplemental details necessary to address the review criteria and satisfy any specific requirements for such use described in this chapter, and any other information pertinent to the specific requested use of the site.
2. A written statement specifically addressing the general requirements of this section and this Code as well as consistency with the City's Comprehensive Plan.

C. *Notice and Hearing Procedures.* The procedures for notice, review and approval of special exception requests shall be as follows:

1. *Notice.* Notice shall be pursuant to the due public notice requirements contained in App. G, section 2-2 of this Code.

2. *Hearing.*

(a) *Planning and Zoning Board Action.* The Planning and Zoning Board shall hold a public hearing to consider and make a recommendation to the City Council on a special exception application. The recommendation of the Planning and Zoning Board shall be forwarded to the City Council for consideration.

(b) *City Council Action.* The City Council shall consider the recommendation of the Planning and Zoning Board and any additional evidence presented before taking final action on a proposed special exception. However, if the Planning and Zoning Board fails to make a recommendation within sixty (60) days of commencing consideration of a special exception, the City Council may take action on the special exception based upon an assumed recommendation of approval from the Planning and Zoning Board.

D. *Special Requirements and Conditions.*

1. *Conditions and Safeguards.* In granting any special exception, the Planning and Zoning Board may recommend, and the City Council may prescribe, appropriate conditions and safeguards to ensure compliance with the requirements of this section and the code in general. Such conditions may include time limits for the initiation of the special exception use, specific minimum or maximum limits to normative Code requirements, or any other conditions reasonably related to the requirements and criteria of this chapter.

2. *Review Criteria.* When reviewing an application for a special exception, the Planning and Zoning Board and City Council shall consider the following requirements and criteria:

(a) Traffic generation and access for the proposed use shall not adversely impact adjoining properties and the general public safety;

(b) Off-street parking, loading and service areas for commercial, hotel/motel and multifamily residential development shall be provided and located such that there is no adverse impact on adjoining properties, beyond that which generally experienced in the district with regard to normative development activity;

(c) Required yards, screening or buffering and landscaping shall be consistent with the district in general and the specific needs of the abutting land uses as determined by the City;

(d) Architectural and signage treatments shall comply with the general provisions applicable to permitted uses in the district, to the greatest extent practicable, and mitigate impacts to surrounding development; and

(e) Size, location or number of special exception uses in an area shall be limited so as to maintain the overall character of the district as generally intended by this Code.

3. Notwithstanding the review criteria established within this section, all special exceptions shall also be reviewed pursuant to the criteria established in section 14-69.1(1) through (4) of this Code.

4. *Transfer or Abandonment of Special Exceptions.* Special exceptions shall run with the property and the ownership of a special exception use may be transferred to another party. A special exception use that is not initiated within two (2) years of being granted shall not be established without a new public hearing in accordance with requirements of this section and shall be deemed abandoned. A special exception use that is abandoned, after establishment, for a period of six (6) months or more shall not be reestablished without a new public hearing in accordance with requirements of this section.

5. *Distance Between Special Exception Uses.* Unless the method for measurement is specifically described herein, the distance between specific uses shall be measured by a straight line drawn from the nearest point of each lot, parcel or site to each other and such measurement shall be irrespective of jurisdictional boundaries.

6. *Special Locational Criteria.* Where the proposed site for a special exception use is required to be located on or front an arterial or major collector roadway, said requirement is intended to ensure that traffic impacts associated with the use are directed toward the major collector or arterial roadway. Accordingly, this frontage requirement may be met by sites without direct frontage on the major collector or arterial, provided that the site location is in close proximity to the designated roadway, and the traffic impacts associated with the proposed use will be directed through areas of higher intensity development to reach the designated roadway.

7. *Violation of Special Exception Terms or Conditions.* It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of a special exception. Violations may be prosecuted or enforced in any manner as may be provided by law for prosecution or enforcement of municipal ordinances.

8. *Denial.* The Planning and Zoning Board may recommend denial of any application for any special exception, and the City Council may deny any application for special exception, for any of the following reasons or a combination thereof:

- (a) Inconsistency with the findings and intent of this section.
- (b) Inconsistency with any goal, objective or policy of the Comprehensive Plan.
- (c) Adverse affect upon the public interest.
- (d) Failure to meet the requirements of the applicable special exception regulations.
- (e) Failure to meet all requirements imposed by federal, state, other local government or City Council, law, rule, regulation, ordinance, or policy.
- (f) Creation of a hazard, a public nuisance or a circumstance dangerous to individuals or the public.
- (g) Incompatibility with the predominant use or character of the surrounding property.
- (h) The use will materially alter, disrupt or decrease the character or value of the area within which the use is proposed or abutting neighborhoods.
- (i) The use will adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution.

9. *Expiration or abandonment of special exception purpose.* If a special exception does not begin to serve the purpose for which it was granted permission within two (2) years

from the date of approval of the special exception it shall expire and be deemed, conclusively, to have been abandoned. The submittal of a site development plan will constitute meeting the requirements of this provision. If after receiving approval the site development plan expires, the special exception will also expire and a new application must be submitted and approved in accordance with this section.

A. The following uses are permitted as special exceptions in all districts unless otherwise noted:

1. Package sewage treatment plants provided the following requirements are met:

8. Temporary Parking, provided:

a. Screening and/or landscaping will be required as a buffer on all nonstreet property lines.

b. The hours of operation and noise caused by the parking shall not be inconsistent with the character of the neighborhood.

c. The purpose for the parking shall be within a reasonable distance of said parking.

d. This special exception may be approved for a limited period of time. In this event the City may determine to issue variances relating to ~~waive~~ certain requirements that would ordinarily be required for a permanent improvement.

e. Pursuant to the authority of section 14-69.1, 5. of this Code, the Planning and Zoning Board is hereby assigned the duties [as] to the granting of special exemptions under this provision. In addition, any recommendations by the Planning and Zoning Board shall be heard and require final approval by the City Council after a public hearing.

f. Pursuant to the authority of section 2-2 of this Code, due public notice shall be established.

g. All off-beach parking shall be permitted in the GC-RD, GC-1 and GC-2 commercial zoning districts pursuant to this Ordinance.

B. The following uses are permitted as special exceptions in the T, RMF-1 and RMF-2 districts unless otherwise noted:

D. The following uses are permitted as special exceptions in the GC-RD zoning districts as follows:

1. Automotive Service Stations. In order to provide for the sound development of automotive service stations, as defined in App. G, section 2-2 of this Code, such land use may be permitted only upon a development order being approved granting a special exception in the GC-RD zoning district subject to the following development standards:

4. Parking, provided:

- a. Screening and/or landscaping will be required as a buffer on all nonstreet property lines.
- b. The hours of operation and noise caused by the parking shall not be inconsistent with the character of the neighborhood.
- c. The purpose for the parking shall be within a reasonable distance of said parking.
- d. This special exception may be approved for a limited period of time. In this event the City may determine to issue variances relating to certain requirements that would ordinarily be required for a permanent improvement.
- e. Pursuant to the authority of section 14-69.1, 5. of this Code, the Planning and Zoning Board is hereby assigned the duties as to the granting of special exemptions under this provision. In addition, any recommendations by the Planning and Zoning Board shall be heard and require final approval by the City Council after a public hearing.
- f. Pursuant to the authority of section 2-2 of this Code, due public notice shall be established.
- g. Off-beach parking facilities shall be located within five hundred (500) feet of a public pedestrian beach access or vehicular ramp and:
 - 1. The total off-beach parking, driving and vehicular use areas do not exceed sixty (60) percent of the overall area of the property.
 - 2. There is a clear demonstration of need for the off-beach parking facility based upon sound and generally accepted scientific and land use planning practices and principles. The burden of proof shall be on the property owner to meet this requirement.

F. The following uses are permitted as special exceptions in the GC-1 and GC-2 zoning districts.

1. Parking, provided:

- a. Screening and/or landscaping will be required as a buffer on all non-street property lines.
- b. The hours of operation and noise caused by the parking shall not be inconsistent with the character of the neighborhood.
- c. The purpose for the parking shall be within a reasonable distance of said parking.
- d. This special exception may be approved for a limited period of time. In this event the City may determine to issue variances relating to certain requirements that would ordinarily be required for a permanent improvement.
- e. Pursuant to the authority of section 14-69.1, 5. of this Code, the Planning and Zoning Board is hereby assigned the duties as to the granting of special exemptions under this provision. In addition, any recommendations by the Planning and Zoning Board shall be heard and require final approval by the City Council after a public hearing.
- f. Pursuant to the authority of section 2-2 of this Code, due public notice shall be established.

g. Off-beach parking facilities shall be located within five hundred (500) feet of a public pedestrian beach access or vehicular ramp and:

1. The total off-beach parking, driving and vehicular use areas do not exceed sixty (60) percent of the overall area of the property.
2. There is a clear demonstration of need for the off-beach parking facility based upon sound and generally accepted scientific and land use planning practices and principles. The burden of proof shall be on the property owner to meet this requirement.

SECTION THREE: ENFORCEMENT, PENALTIES AND APPEALS.

- (a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.
- (b). The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law including, but not limited to, suspension or revocation by the Building Official of the special exception development order subject, however, to appeal to the Code Enforcement Board. An appeal must be filed within ten (10) days of the action taken by the Building Official by filing a written appeal with the City Clerk detailing the basis of the appeal together with any filing fee that may be established by the City Council as adopted in a resolution.
- (c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or as may be available under the controlling provisions of State law.

SECTION FOUR: SAVINGS/CONTINGENCY.

- (a). The prior actions of the City of Daytona Beach Shores relating to the regulation of the matters and uses which are the subject of this Ordinance are hereby ratified and affirmed.
- (b). Should the use of parking with regard beachside parking lot construction be determined to be permitted notwithstanding the findings and determinations of the City Council as set forth herein, the processes, procedures and requirements of this Ordinance shall be fully applicable to any such proposed development.

SECTION FIVE: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Three, Four, Five, Six, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance. The legislative intent set forth in the recitals to this Ordinance shall be codified.

SECTION SIX: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION SEVEN: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Without limiting the generality of the foregoing, all parking standards and requirements shall be applicable to any parking proposed in any manner that would implicate the provisions of Section Four (b) of this Ordinance.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER
Approved as to form and legality:

CHERI SCHWAB, CITY CLERK

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2017.

Adopted on second reading this _____ day of _____, 2017.